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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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In the Matter of:

City of Hampton, Virginia

22 Lincoln Street

8th Floor City Hall

Hampton, VA 23669

**ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT**

Docket No. CWA-03-2016-00620DN

I. STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Order for Compliance on Consent ("AOCC" or "Order") is issued to the City of Hampton, Virginia ("Hampton" or "the City") pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") pursuant to Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.

**II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS,
AND CONCLUSIONS OF LAW**

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to her the EPA Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, she shall issue an Order requiring such person to comply with such section or requirement.
3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the EPA Administrator may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

5. “Discharge of a pollutant” includes “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2.
6. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
7. The term “municipal separate storm sewer” system (“MS4”) means “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) Owned or operated by a State, city, town, . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, . . . (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.” 40 C.F.R. § 122.26(b)(8).
8. The City is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
9. The City of Hampton encompasses a total area of approximately 51 square miles of land. According to the 2010 Census, its population is estimated at 137,436 people.
10. The City of Hampton is located in southeastern Virginia and is bordered by York County, the cities of Poquoson and Newport News, the James River and the Chesapeake Bay.
11. The City owns and operates a MS4 located in the City of Hampton, Virginia.
12. The City’s MS4 discharges storm water to the James River and the Chesapeake Bay.
13. The James River and Chesapeake Bay are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.
15. The Virginia Department of Environmental Quality (“VA DEQ”) issued the City a Virginia Pollution Discharge Elimination System Permit, VAOO88633, which regulates discharges from the City’s MS4 (the “MS4 Permit”). The MS4 Permit has an effective date of March 8, 2001 and an expiration date of March 8, 2006. The MS4 Permit has been administratively extended until such time as a new permit is issued.
16. On January 21, 2015, duly-authorized EPA representatives conducted an inspection of the City’s MS4 program (“the 2015 MS4 Inspection”).

17. During the 2015 MS4 Inspection, EPA representatives identified a number of observations and violations of the MS4 Permit and the CWA as described below.
18. An inspection report describing those observations was prepared and a copy of the inspection report was sent to the City of Hampton on June 23, 2015 via electronic mail.
19. Part I.A.1.c(1) of the MS4 Permit requires the City to “inspect any new or previously unidentified facilities (as described above)” and provides that the City “may establish and implement control measures as necessary/appropriate for storm water discharges from these facilities.”
20. At the time of the 2015 MS4 Inspection, EPA representatives noticed that the City is using individuals to inspect industrial and commercial businesses for storm water purposes who are not trained in storm water issues and who overlooked several storm water-related issues identified during site visits as part of the 2015 MS4 Inspection.
21. The City’s failure to identify and address potential new sources of pollution to the MS4 represents a violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. COMPLIANCE ORDER

Therefore, this 13th day of April, 2016, the City is hereby ORDERED pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to do the following:

A. Joint Inspections

22. Fire Marshal employees and storm water employees will conduct joint inspections of the following:
 - (a) Of the approximately twenty-four (24) non-City, state or federally owned facilities having VPDES industrial storm water permits, at least four (4) inspections per year; and
 - (b) Of the approximately 275 commercial businesses in the City, at least ten (10) inspections per year of sites such as: (i) Major automotive facilities, e.g., repair shops, body shops, auto detailers, tire repair shops, automotive dealerships, and automobile service stations that may discharge motor vehicle fluids such as oil and antifreeze; (ii) Car washes; (iii) Chemical storage facilities; and (iv) Outside storage of manufacturing, processing, or raw materials that do not have a VPDES permit.

23. Joint inspections will be prioritized to ensure the best use of resources. Prioritization will be based on factors such as historical discharges, business type, and industrial categories.

B. Storm Water Training for Fire Marshal Employees

24. Within six (6) months of the Effective Date of this Order, provide storm water training to at least two (2) Fire Marshal employees.
25. Within two (2) years of the Effective Date of this Order, provide storm water training to all Fire Marshal employees who conduct inspections under the Act.
26. Within three (3) months of the Effective Date of this Order, provide a detailed description of the storm water training to be provided to the Fire Marshal employees.
- (a) The storm water training must be partially instructional, using Section 5 of EPA's "Developing Your Stormwater Pollution Prevention Plan, A Guide for Industrial Operators" as guidance for the storm water training topics, and partially field-based by way of conducting at least three (3) inspections in conjunction with the City's storm water inspectors.
- (b) Inspections conducted under III.A, above, may count toward these initial three (3) training inspections.

C. Ongoing Joint Inspections

27. In addition to the joint and training inspections described in III.A and III.B above, Fire Marshal employees will request the assistance of storm water employees on an as-needed basis to inspect sites of concern.

D. Training and Inspection Reports

28. Every twelve (12) months after the Effective Date of this Order, provide EPA with a report for the preceding twelve (12) months identifying: (1) names of employees of the Fire Marshal's office who have received storm water training; (2) names of facilities identified in Paragraph 22 that have been inspected; and (3) names of inspector(s) who conducted each inspection.
29. All documents required under this Order shall be sent either via first-class mail or electronic mail to:

Peter Gold
Environmental Scientist
U.S. Environmental Protection Agency, Region III

1650 Arch Street (3WP42)
Philadelphia, Pennsylvania 19103-2029
Gold.peter@epa.gov

30. All documents provided pursuant to this Order shall be accompanied by a certification signed by the City pursuant to 40 C.F.R. § 122.22 that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IV. GENERAL PROVISIONS

31. For the purpose of this proceeding:
- (a) The City admits to the jurisdictional allegations of this AOCC;
 - (b) The City neither admits nor denies the specific factual allegations and conclusions of law set forth in this AOCC;
 - (c) The City agrees to undertake all actions required by this AOCC and consents to issuance of this AOCC without adjudication; and
 - (d) The City agrees not to contest EPA's jurisdiction to issue and enforce the terms of this AOCC.
32. Each party to this agreement shall pay its own costs and attorney's fees.
33. The City waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, providing for judicial review of final agency action.
34. This AOCC addresses only the violations described herein. EPA reserves the right to commence action against any person, including the City, in response to any condition not

described herein that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.

35. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the City of its obligation to comply with any applicable federal, state, or local law or regulation.
36. EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order.
37. This AOCC may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which together shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.
38. All of the terms and conditions of this AOCC together comprise one agreement. In the event that this AOCC or one or more of its terms and conditions is held invalid, is not executed by all signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, the entire AOCC shall be null and void.
39. The provisions of this AOCC shall be binding upon the City, its officers, principals, directors, successors, and assigns.
40. The undersigned representative of the City certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOCC and to execute and legally bind that party to it.

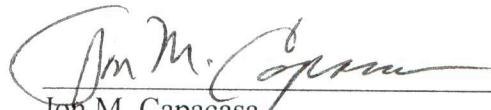
V. EFFECTIVE DATE AND TERMINATION

41. This Order will become effective upon the City's receipt of a fully-executed copy of this Order unless modified or withdrawn.
42. This Order shall terminate upon the issuance of a revised National or Virginia Pollution Discharge Elimination System permit.

SO ORDERED:

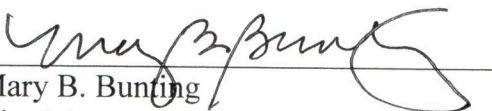
Date:

4/13/16


Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For the City of Hampton, Virginia:

By: 
Mary B. Bunting
City Manager

Date: April 28, 2016

CITY OF HAMPTON
OFFICE OF THE CITY ATTORNEY

Approved as to legal form and sufficiency

Date: 04.19.2016


Attorney

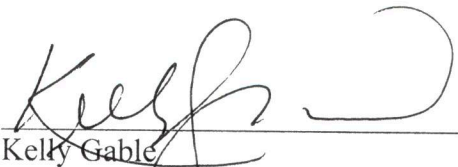
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CERTIFICATE OF SERVICE

I hereby certify that I sent a true and correct copy of the Administrative Order for Compliance on Consent to the following persons via certified mail, return receipt requested, at the addresses listed below after filing the original with the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103.

Mary B. Bunting, City Manager
City of Hampton
22 Lincoln Street, 8th Floor City Hall
Hampton, VA 23669

Date: 3 May 2016



Kelly Gable
Assistant Regional Counsel
U.S. EPA, Region III